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No. 81-332

IN THE

Supreme Court of the United States

GLASGOW, INC.,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA and RAYMOND WILLIAMS, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY TO BRIEFS OF INDIVIDUAL AND CLASS AND COMMONWEALTH RESPONDENTS

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ARGUMENT

I. Introduction.**

Respondents' presentations to this Court are filled with mischaracterizations, inaccuracies and misrepresentations of the record and of the opinion of the district court. Respondents' legal arguments contain sweeping generalities in which bald conclusions are arrived at without the

* All references to the Appendix to Petitions for Certiorari will be designated by "PA. ____"; all references to the Joint Appendix on Writ of Certiorari will be designated by "JA. ____". Petitioner Glasgow's principal brief is cited as "Pet. Glasgow Br.", and the brief for Individual and Class Respondents is cited as "Resp. Ind. Br.". References to trial transcript will be designated by "____ day, ____". References to Union trial exhibits will be designated by "U- ____".

** Petitioner Glasgow incorporates herein by reference the discussions of the All Writs Act, 28 U. S. C. § 1651, contained in the Reply Briefs of Bechtel Power Corporation and the CAEP and UCA.

benefit of any meaningful legal reasoning. Likewise, Respondents' citation to authority relied upon to support their propositions are often misleading. This plethora of difficulties compels this Petitioner to respond.

Initially, it must be made clear that the district court *did not find* that Glasgow had engaged in any discrimination against minorities.[1] Thus, the district court did not hold that Glasgow violated § 1981, nor that it denied to minorities the same right to make and enforce contracts as was enjoyed by whites. Rather, the district court held that Glasgow was liable vicariously, at least injunctively, for the Union's intentional discrimination in breach of § 1981.[2] The question whether responsibility for the Union's discrimination can be lodged beyond the Union itself is what this Court must determine.

It should also be noted that Glasgow neither seeks nor claims any exemption from the requirements of § 1981. Glasgow recognizes that it, as any other employer, is subject to the duty imposed by § 1981. It cannot rid itself

1. At trial, Respondents attempted but failed to prove that Glasgow itself—separate and apart from the claim involving imputation of liability—engaged in employment practices violating § 1981. (PA. 128-32). No appeal was taken from this ruling. Since the opportunity to establish liability is over, the district court's comments respecting further "evaluation" of Glasgow's practices has no merit. *See, Montana v. United States,* 440 U. S. 147, 154 (1979).

2. The opinion of the district court refers several times to vicarious liability. However, in at least two places, it refers to an "affirmative duty" under § 1981 of Glasgow and other employers to "prevent discrimination" (PA. 186) or "to see that discrimination does not take place in the selection of [its] work-force", calling this a non-delegable duty. The import of the opinion is that this duty was breached by Glasgow and the other employers. Although this smacks of a direct violation under § 1981, the opinion—perhaps erroneously—calls it "respondeat superior" liability. *See* Pet. Glasgow Br. 20-31.

of that duty and never used the Union or anyone else as a shield for that duty. However, the intentional discrimination which the district court found to have violated § 1981 did not take place in Glasgow's workforce, but rather was practiced by the Union in referral from its hiring-hall. Thus, for the reasons set forth in its brief on the merits, Glasgow cannot be liable in this case for the Union's violation of § 1981.

II. Respondents' Discussion of the Evolution of the Affirmative Action Program as Well as Their Discussion of the Joint Apprenticeship and Training Committee Is Irrelevant and Misleading.

Throughout their briefs, both the Commonwealth and the Individual and Class Respondents discuss the Affirmative Action Program ("AAP") and its relation to the Union's federally-granted exemption from the Philadelphia Plan, as well as the finding of discrimination against the Joint Apprenticeship and Training Committee ("JATC"). The discussion of these matters in Respondents' briefs progresses as if this information is somehow relevant to the matter at bar. It is not. However, for purposes of clarification, Glasgow herein will engage in a brief discussion of these matters.

A. The District Court Did Not Find That Any Law Had Been Violated by Glasgow or Any Other Employer Through the Associations' Execution of the Affirmative Action Program.

Notwithstanding Respondents' assertions to the contrary, the district court did not find that any association or employer violated the law by any association's signing of the so-called AAP (PA. 198). Quite to the contrary, the district court grounded the Petitioners' vicarious liability under § 1981 for the acts of the Union solely "as a

result of their contractual relationship to and use of a hiring hall system which in practice effectuated racial discrimination, whether or not the employers and associations knew or should have known" (PA. 168). In addition, it is noted that the AAP was an alternative to the so-called Philadelphia Plan only insofar as the Plan's reporting requirements related to work to be performed by the operating engineers' craft.[3]

The initial Philadelphia Plan came into existence on November 30, 1967, when the United States Department of Labor approved the Philadelphia Pre-Award Plan as a vehicle for providing affirmative action in employment among certain government contractors. As initially devised, the Plan itself was extremely limited in application for it applied only to federally-funded construction projects which were to exceed $500,000 and which were to be located in the immediate five-county Philadelphia area (JA. 173).[4]

The operating engineers' trade was among the eight Philadelphia-based construction trades originally listed within the coverage of this Philadelphia Plan. Under this Plan, the apparent low-bidder was required to submit a specific manning table for minority employment for each of the eight trades involved. The first construction project affected by this newly devised Philadelphia Plan was awarded to a non-Pennsylvania contractor in April

3. Despite the signing of the Affirmative Action Program documents, no contractor was relieved from following the Philadelphia Plan's specific minority manpower utilization requirements for the other Philadelphia-based construction trades. These trades included the Iron workers, Plumbers and Pipefitters, Sheet Metal workers, Electrical workers, Roofers and Elevator construction workers.

4. In contrast, Local 542's geographical jurisdiction covered all thirty-three counties of Eastern Pennsylvania and the entire State of Delaware.

of 1968. However, the contractor was unwilling to submit to a specific manning table for operating engineers because it was required to use Local 542's exclusive hiring hall referral system (U-312; 132nd day, 12067). Against this background, representatives of the U. S. Department of Labor summoned association representatives to a meeting in Washington, D. C. (132nd day, 11945). At this meeting, the Department of Labor officials presented the Associations' representatives with an *already-drafted* Affirmative Action Program document. Once that document was executed, the Union, but no other trade, was considered to be outside the coverage of the Philadelphia Plan. Although the Union later advised the U. S. Department of Labor of the inaccuracy in the Program document of its assertion as to the number of minorities affiliated with it, the U. S. Department of Labor opted not to reinsert the Union within the Philadelphia Plan coverage when it revised the Philadelphia Plan in June, 1969. Furthermore, the district court found that the signatory Associations had no actual knowledge of the inaccuracy (PA. 198).

Moreover, it is important to note that the record evidence reveals that prior to the signing of the Affirmative Action Program document neither Glasgow nor any contractor-member of Petitioner Associations ever had any federal job funds withheld from it pursuant to the Philadelphia Plan's requirement for the insertion of minority manning tables in a covered Philadelphia Plan contract (132nd day, 11955-56).

B. The District Court's Finding of Liability on the Part of the JATC Did Not Serve as a Basis of Liability as to Glasgow or Any Other Employer.

Quite contrary to the Respondents' assertion, the district court did not premise any liability on the part of

Glasgow or any employer on any conduct of the JATC. It is imperative to note that the district court did not hold that anyone other than the JATC itself was liable for its discrimination. The district court did not hold that the JATC trustees were the agents of any principal, and it is worthy of note that such a finding would have been improper under this Court's decision in *NLRB v. Amax Coal Co.*, 101 S. Ct. 2789 (1981), which decision makes clear that the trustee's duty is to the beneficiaries of the trust to the exclusion of the interests of all others. It was stated therein that "the duty of the management-appointed trustee of any employee benefit fund . . . is directly antithetical to that of an agent of the appointing party." *Id.* at 2795.

III. Glasgow Cannot Be Liable for the Union's Violation of § 1981.

A. Respondents' Non-Delegable Duty Argument Is Without Merit.

Glasgow recognizes that the duty imposed by § 1981 is of a personal nature. That duty may not be delegated to another such that Glasgow would be held harmless for a breach of its duty. However, in this case Glasgow did not breach its duty under § 1981. Rather, § 1981 was violated when the Union breached the duty it owed to the plaintiffs. As a result of their difficulty in supporting the district court's holding of vicarious liability, Respondents assert that § 1981 created a duty analogous to a non-delegable duty—a duty to assure that others do not practice racial discrimination—to hold Glasgow liable. For the reasons set forth herein as well as in Glasgow's principal brief, this argument is unavailing. *See,* Pet. Glasgow Br. 20-31.

1. Section 1981 Does Not Give Rise to a Non-Delegable Duty.

The main thrust of Respondents' argument is that § 1981 imposes a non-delegable duty upon Glasgow such that the Union's discrimination in referral is attributable to Glasgow even if Glasgow had no knowledge or reason to know of any discrimination being practiced by the Union.[5] Section 1981 does not permit such an interpretation.

In seeking to determine legislative intent when undertaking the task of interpreting a statute, the three factors traditionally relied upon by the judiciary are "the language and focus of the statute, its legislative history, and its purpose." *Touche Ross & Co. v. Redington*, 442 U. S. 560, 575-76 (1979), *citing Cort v. Ash*, 422 U. S. 66, 78 (1975). As stated in Glasgow's principal brief, nothing in the language or legislative history of § 1981 gives rise to the asserted non-delegable duty—the duty to prevent discrimination by others—*and* when such a duty arises from a statute, that duty must be clearly expressed in the statute. Apparently, this is not enough to dissuade Respondents who conclude without evidence of any cogent legal

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5. The court below invoked *respondeat superior*, a concept based upon the relationship of master and servant, to justify its imputing vicarious liability to employers such as Glasgow. Respondents do not seriously attempt to bolster the district court's finding of liability on the basis of *respondeat superior*. Indeed, they cannot do so since, as demonstrated in Glasgow's principal brief, employers such as Glasgow do not have the right to control the actions of the Union necessary to create a master-servant relationship. Instead, Respondents focus their attention on the asserted existence of a non-delegable duty on the part of the employers, apparently conceding thereby that Local 542 must be viewed at most as an independent contractor and not a servant.

reasoning that § 1981 does indeed give rise to such a duty.[6]

In *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U. S. 77, 97 (1981), this Court cautioned against adding new remedies in the absence of a determination that these remedies were contemplated by the Congress. In that case, as here, the question of liability "is entirely a creature of federal statute."[7] While the Court noted that most statutory schemes require some judicial interpretation, it stated that "the authority to construe a statute is fundamentally different from the authority to fashion a new rule or to provide a new remedy which Congress has decided not to adopt."[8] Since there is no other basis whatever for holding Glasgow liable, Respondents urge this Court to read a non-delegable duty into § 1981. In the absence of any indication of Congressional intent in this regard, this Court must heed its admonishment in *Northwest Airlines* and not fashion such a new rule of liability for § 1981.

Should this Court find the equitable considerations advanced by Respondents to be compelling, it still cannot attach a non-delegable duty to § 1981. As was noted in *Northwest Airlines, supra* at 98, n. 41, those equitable considerations should be addressed to Congress rather than the federal courts. In *United States v. Gilman*, 347

6. The language of § 1981 is not directly addressed to anyone, nor does it expressly create any duties. It speaks simply of the rights of all persons to make and enforce contracts on the same basis as whites. By reference to the express terms of § 1981 then, liability may only be imposed for the denial to black persons of the right to contract on the same basis as whites. In this case there has been no finding that Glasgow denied to blacks this right. Only the Union was found to have denied blacks the right secured by § 1981.

7. 451 U. S. at 97.

8. *Id.*

U. S. 507 (1954), a case such as this involving the interpretation of a federal statute, this Court instructed:

> [T]he claim now asserted, though the product of a law Congress passed, is a matter on which Congress has not taken a position. It presents questions of policy on which Congress has not spoken. The selection of policy which is most advantageous to the whole involves a host of considerations that must be weighed and appraised. That function is more appropriate for those who write the laws, rather than for those who interpret them.[9]

Finally, this Court has been hesitant to impose liability based on the doctrine of non-delegable duty. *See Logue v. United States*, 412 U. S. 521, 529 n. 7 (1973). In that case, the "duties" required under 18 U. S. C. § 4042 were specifically enumerated in direct contrast to the generalized right set forth in § 1981. Yet, even there a non-delegable duty was not found to have arisen.

2. The Cases Relied Upon by the Respondents Do Not Support a Finding of Liability of Glasgow Under the Principle of Non-Delegable Duty.

Beyond the question of the interpretation of § 1981 not permitting the creation of a non-delegable duty by the judiciary, which question Respondents have not addressed, Respondents seek to demonstrate that the principle of non-delegable duty operates in this case to hold Glasgow liable by reference to a 1918 New York case and a number of civil rights cases. None of the cases relied upon remotely supports the proposition that an employer such as Glasgow is liable for intentional discrimination practiced by a union in its operation of a referral system, in the absence of knowledge or reason to know.

9. 347 U. S. at 511-13.

In *People ex rel, Price v. Sheffield Farms-Slawson Decker Co.*, 225 N. Y. 25, 121 N. E. 474 (1918), the employer was found to have violated the New York law against employing children, which law expressly imposed duties upon employers. One of the employer's drivers had seen fit to employ a child contrary to a rule the employer had promulgated, as well as the law. The court held the employer responsible since the violation of the law was committed by an employee of the employer within the course of employment (a servant). Surely, that case can have no bearing where, as here, the violation was committed by the Union, not a servant of Glasgow.

Respondents also seek to rely upon "Title VII and § 1981 [cases] hold[ing] employers responsible for their hiring agents' intentional discrimination" (Resp. Ind. Br. 26) for the proposition that the duty imposed by § 1981 is non-delegable. In every one of the cases cited by the Respondents the 'hiring agent' was an employee-supervisor of the employer. The discrimination of the supervisor was chargeable to the employer under the principle of *respondeat superior*; non-delegable duty was not a basis of liability in any of the cases.

The cases involving the fair housing laws which Respondents' cite are also wholly unsupportive of the presence of a non-delegable duty in § 1981. Although some of these cases allude to the non-delegable duty principle, all of the cases involve liability of masters or principals for the intentional acts of discrimination perpetrated by their employee-servants. In not one of the cases in which non-delegable duty is mentioned is there any analysis of the concept. Rather, its existence is merely assumed in passing and, in fact, is *dicta* since the cases impute liability vicariously.[10]

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10. There is simply no reason to assume that because of Title VIII's proscriptions against discrimination in the sale of real estate,

The Fourteenth Amendment state action cases cited by Respondents also are wholly inapposite. None of the cases even mentions the non-delegable duty principle but rather are directed to the specific issue as to when the involvement of the state is sufficient for a violation of the equal protection clause contained in Section 1 of the Fourteenth Amendment to be made out. These cases have nothing whatever to do with the question of the interpretation of a federal statute—§ 1981—in order to determine precisely what duty or duties it creates.

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10. (Cont'd.)

Section 1981 creates a non-delegable duty in the area of employment. Unlike Title VIII's ban on discrimination, Section 1981's declaration against non-discrimination cannot be viewed in a vacuum. Rather, it must be read in harmony with the pervasive regulatory scheme created by the National Labor Relations Act. *See Emporium Capwell Co. v. Western Additional Community Organization*, 420 U. S. 50 (1975). When viewed in the context of the National Labor Relations Act, the employers' entering into an exclusive hiring hall system in the instant case cannot possibly subject them to liability on the theory of breach of a non-delegable duty.

In *Teamsters Local 357 v. NLRB*, 365 U. S. 667 (1961), the Supreme Court specifically rejected the NLRB's contention that hiring halls were inherently discriminatory, and approved of their use. The Court noted that hiring halls in the construction industry have long been recognized as the most economic and efficient manner of allocating jobs in a transitory work situation. 365 U. S. at 672. In fact, a union's demand for an exclusive hiring hall provision is a mandatory subject of bargaining under the NLRA. *NLRB v. Houston Chapter, Associated General Contractors of America, Inc.*, 349 F. 2d 449 (5th Cir. 1965). In view of these expressions of our national labor policy, it borders on the ridiculous to suggest that employers who have entered into a bona fide hiring hall arrangement can be held vicariously liable for the Union's acts of discrimination on the theory that Section 1981, which by its language imposes no duty on any specific individual, creates a non-delegable duty to prevent discrimination by a union.

3. Even if § 1981 Gives Rise to a Non-Delegable Duty, Intent Is Required for Its Violation.

Despite Respondents' assertion to the contrary, Glasgow did not concede in the court of appeals, and does not concede before this Court, that it is not necessary to resolve the question of whether proof of intent is required to establish a § 1981 violation. In fact, Glasgow's position on this specific question was set forth in its brief to the court of appeals. *See* Glasgow Ct. Apps. Br. 14-15.

In accordance with its principal brief at pp. 24-31, Glasgow's position is that should this Court determine that the asserted non-delegable duty exists in § 1981, then a resolution of this question of intent is mandated. A finding by this Court that proof of intent is required under § 1981 would mean even a non-delegable duty cannot be used as a vehicle for imposing liability upon Glasgow. Simply stated, the district court found that the plaintiffs have failed to show that Glasgow intended to discriminate (PA. 195), and plaintiffs would have to have made such a showing to hold Glasgow liable for breach of any non-delegable duty.

B. The Hiring-Hall Was Not a Joint Enterprise.

The Individual and Class Respondents engage in a re-drafting of the district court's opinion when they state that the district court, in the alternative, held that the hiring-hall was a joint enterprise of the Union and the contractors, acting as agent for each. To the contrary, the district court did not make any alternative holding, and never even used the term "joint enterprise". The district court did hold that that "the union hiring hall was the agent" of the contractors (PA. 191). However, Glasgow has conclusively demonstrated in its brief on the merits that in no way could the relationship between

Glasgow and the Union be characterized as that of principal-agent. The district court did not hold, nor did it even mention, that Glasgow was liable in the alternative because the hiring hall was a joint enterprise of Glasgow and the Union. Thus, Respondents' counsel has misleadingly attempted to re-write the opinion of the district court and to present this Court with a basis of liability that has not been heretofore advanced or addressed by any party in this case.[11]

Notwithstanding the Respondents' mischaracterization of the opinion of the district court, the law that has developed in the area of "joint enterprise" clearly compels the conclusion that just as the hiring-hall cannot be said to be the agent of Glasgow, similarly, Glasgow and the Union cannot be said to have embarked upon a joint enterprise through Glasgow's coerced agreement to the hiring-hall system. The four elements which must all be present for a joint enterprise to exist may be found in the Restatement (Second) of Torts § 491:

> (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control.

11. Respondents rely upon the case of *Stockwell v. United States*, 80 U. S. 531 (1879), to support their contention that the hiring-hall was a joint enterprise of Glasgow and the Union. In fact, the business arrangement in *Stockwell* was a partnership, not a joint enterprise. As the Court stated: "By the arrangement he [Stockwell] became a partner with them in the shingle business." *Id.* at 544. Thus, Stockwell's tortious acts were attributable to his partners. Respondents have not and cannot seriously contend that Glasgow and the Union were partners, and therefore *Stockwell* is wholly unsupportive of their claim of the existence of a joint enterprise.

Certainly, the requirement that there be a community of pecuniary interest between Glasgow and the Union cannot be satisfied. The relationship between employer and union which is delineated in the National Labor Relations Act, specifically 29 U. S. C. § 158(a)(2), does not ever permit the existence of such a community of pecuniary interest.

Respondents seek to have this Court view the Union hiring-hall as a joint construct of the employers and associations on the one hand, and the Union on the other. Such a characterization is misleading. The hiring-hall has no meaningful existence separate from the Union. Indeed, the collective bargaining agreements require employers to request referrals from the Union, *not* any hiring-hall.

As an employer, Glasgow would simply phone the appropriate Union hiring-hall and inform the Union dispatcher on duty of its need for an operator. In return, an operator would show up for work as requested. The evidence was clear that the dispatcher, and indeed all persons with any responsibility whatever for the operation of the hiring-hall referral-system were employees of the Union. Neither the contractors nor the associations had anything at all to do with the operation of the system.

Moreover, Glasgow did not have an equal right to control the operation of the hiring-hall so that the fourth element of a joint enterprise is not satisfied in this case. The element of control will be fully explored in Part C, *infra*.

C. Glasgow Had No Right to Control the Union Hiring-Hall.

Analyzing the element of control, the district court simply stated that the employers were entitled to a hiring-hall operation which adhered to the terms of the collective

bargaining agreement, one term of which prohibited racial discrimination (PA. 193). The right to control focuses not on the *results* of the actor's performance, but rather on whether the principal retains the right to direct the *manner* of the actor's performance.[12]

Even as found by the district court, the facts indicate that an employer such as Glasgow did not have the right to control the Union's manner of achieving the ends specified in the collective bargaining agreement. Plainly, the mere recitation in the collective bargaining agreement of the details of the service which the Union was to provide an employer does nothing more than describe with a certain degree of specificity the result which the Union

12. Respondents assert that the conclusion of the district court that petitioners did retain power over the hiring process (i) has not been challenged, and (ii) is a finding of fact which cannot be set aside unless clearly erroneous. First, the question of right to control has been extensively addressed by all of the Petitioners both before this Court and in the court of appeals. Second, the question of the right to control the hiring process is by no means a finding of fact, but rather is clearly a conclusion of law which is reached through an analysis of the facts since it is one of the elements which must be established in attempting to hold one liable vicariously. Third, even if this Court would characterize the determination of the question of the "right to control" as a finding of fact, this Court still has plenary review of the matter because the conclusion of the district court on this question is based entirely upon its reading of applicable provisions of the collective bargaining agreements. It is well established that lower court interpretations of written documents are freely reviewable by appellate courts. *See, e.g., Bowles v. Carnegie-Illinois Steel Corp.*, 149 F. 2d 545, 546 (7th Cir. 1945); *Grove Laboratories v. Brewer & Co.*, 103 F. 2d 175 (1st Cir. 1939); *United States v. Corporation of President of Church*, 101 F. 2d 156, 160 (10th Cir. 1939); *Wilson v. San Francisco Municipal Railway*, 29 Ca. App. 3d 870, 105 Cal. Rptr. 855 (1973); and *Federation of Teachers, Local 2042 v. State*, 514 P. 2d 784 (Colo. App. 1973).

must achieve. In *Logue, supra,* this Court stated that the "critical factor . . . is the authority of the principal to control the detailed physical performance of the contractor." [13] In this case it is undisputed that Glasgow had no right to control the physical performance of the Union dispatchers whose job it was to see that the Union hiring-hall was run in accordance with the rules set forth in collective bargaining agreements.

To further support their claim that Glasgow had a right to control the hiring-hall, Respondents assert that Glasgow, through the grievance procedure, had a right equal to the Union's to enforce the collective bargaining agreement's hiring-hall rules as well as its non-discrimination clause. First, even assuming that this assertion is correct, which Glasgow does not, an equal right to enforce the rules and the non-discrimination clause does not amount to a right to control the day-to-day operation of the hiring-hall. The right to enforce is analogous to the

13. 412 U. S. at 528-29. The petitioner in *Logue* contended that the statute involved, 18 U. S. C. § 4042, imposed "a duty on the Bureau of Prisons to provide for the safe-keeping, care and subsistence of all persons . . ." *Id.* at 529. This Court noted that the county provided custody in accordance with rules and regulations of the Bureau of Prisons which specified treatment standards, discipline methods and rules on such matters as employment, visitation privileges, and attorney communications. Because of the matrix of federal rules and regulations, it was petitioner's contention that the employees of the county jail were employees of the federal government rather than employees of an independent contractor. This Court held that even though the federal government retained the right to inspect the facilities, it had no authority to "physically supervise the conduct of the jail's employees" and thus they were held to be employees of an independent contractor. *Id.* at 531. Similarly, although there are rules governing the operation of the hiring-hall system in this case, Glasgow did not have either the authority or the ability to "physically supervise the conduct of the Union's employees" in their operation of the system.

right to receive the results agreed upon or bargained for. However, this right is distinguishable from the right to control the day-to-day manner of physical performance. Glasgow simply does not possess the right to control the Union's manner of performance in the operation of its hiring-hall.

Secondly, the only vehicle at the disposal of Glasgow to enable it to enforce the hiring-hall rules was the grievance and arbitration machinery of the collective bargaining agreement. Obviously, in no way can its access to the grievance procedure be said to give Glasgow the requisite right to control the day-to-day manner of physical performance of the operation of the hiring-hall system.

Finally, Respondents' assertion that Glasgow retained a right to enforce the collectively-bargained rules governing the hiring-hall, as well as the non-discrimination provision, is, as a practical matter, valueless. Simply stated, in order for Glasgow to take steps to enforce the contractual rules or the non-discrimination clause through the grievance procedure, it first had to be aware that violations were taking place. Knowledge is the springboard for filing of a grievance. However, the district court found that Glasgow did not know, nor had any reason to know, that some of the Union's dispatchers were abrogating the agreement's referral rules.[14]

14. The importance of the presence of the element of knowledge in order for liability to attach for union hiring-hall conduct has, of course, been recognized by cases decided under the National Labor Relations Act. *See,* Pet. Glasgow Br. 14-16.

CONCLUSION

In view of the foregoing, the judgment of the court of appeals as to Glasgow should be reversed and this Court should remand for entry of judgment in Glasgow's favor and for modification of the injunction so as to exclude Glasgow from its terms.

Respectfully submitted,

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